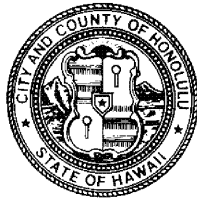


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: October 27, 2014
Standard Financial Plaza
Conference Room, Suite 211

Present: Michael A. Lilly, Esq., Commissioner (Acting Chair)
Stephen Silva, Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stanford Yuen, Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)
Geoffrey Kam, Deputy Corporation Counsel, Department of the
Corporation Counsel (COR)
Donna Leong, Corporation Counsel, COR
Catherine Maki, Administrative Services Officer (ASO), COR
Lila Tom, Chief, Classification and Pay Division, Department of Human
Resources (DHR)
Jay Parasco, Staff, Mayor's Office
Francisco Figueiredo, Staff, Office of Councilmember (CM) Ikaika
Anderson
Sophie Cocke, Civil Beat
Gordon Pang, Star Advertiser

Excused: Charles W. Gall, Esq., Chair
Katy Chen, Esq., Vice Chair
Hon. Riki Amano (ret.), Commissioner

Stenographer: Lisa P. Parker, Legal Clerk III

I. CALL TO ORDER

The 483rd meeting of the Ethics Commission ("Commission" or "EC") was called to order at approximately 11:39 a.m. by the EDLC as the Chair and Vice Chair were absent.

The Commission had before it the EDLC's memorandum regarding the Agenda Items for the October 27, 2014 Meeting, Open Session, dated October 22, 2014.

The EDLC explained that he wanted to express his gratitude to former Po'okela Intern and Legal Clerk I, Darlene Nases, for her hard work. October 31, 2014 will be her last day. The Commission and staff wish her well in her new job.

The EDLC then asked for a Commissioner to voluntarily act as Chair of the Commission for the meeting as Chair Gall and Vice Chair Chen were absent. Commissioner Lilly graciously accepted his nomination by the Commission and volunteered to act as Chair.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSION OF THE SEPTEMBER 17, 2014 MEETING

Commissioner Yuen moved that the minutes be accepted. Commissioner Silva seconded the motion. Commissioners voted unanimously to approve the minutes.

III. OLD BUSINESS

The Commissioners agreed that the next meeting date would occur on November 21, 2014 at 11:30 am. The Commissioners then agreed to set tentative meeting dates on Tuesday, December 16, 2014; Wednesday, January 21, 2015; and Wednesday, February 18, 2015, all at 11:30 am. The EDLC explained that Commissioner Amano requested that meetings be set earlier for planning purposes.

IV. NEW BUSINESS

A. For Discussion: Administrative News.

1. Complaints and requests for advice statistics through last month. The EDLC referred to his Open Session memo dated October 22, 2014.

2. Website Statistics. The EDLC referred to his Open Session memo dated October 22, 2014.

3. Status of Corporation Counsel Legal Opinions to Ethics Commission Regarding COR's Budget Authority. The EDLC stated that there is only one outstanding legal opinion request regarding the basis of COR's claim to have budget authority over the Commission. Ms. Donna Leong, Corporation Counsel, stated that the opinion is in its final stages and that the author is currently out of town on vacation. She expects the opinion to be finalized next week and will be sent via the staff. She stated that she thinks that the Commission will find it "illuminating" and that it gives a full context to answer to the question. She thanked the Commission for their patience.

4. Status of Filling the Legal Clerk I Position; Reallocating the Investigator II to an Investigator IV, and Creating and Filling an Assistant EDLC Position. The EDLC explained that the Legal Clerk I position has been advertised through the EC website, Facebook, and through Craig's List. Staff has interviewed some candidates and there are a few that were well qualified, but it is unknown whether they will accept the position because of the low salary as they have received offers for higher pay. We may have to ask DHR if we are able to hire someone at a higher than entry level pay. We may be able to increase the amount of pay for the FY16 budget. The EDLC stated that he was aware that Ms. Lila Tom, Chief, Division of Pay and Classification, DHR, had a concern about the Commission's request for an Investigator IV because that position needs to supervise another Investigator, which we do not have. An Investigator III does complex case work like our Investigator II. The EDLC also stated that he is working with DHR regarding the Assistant EDLC position.

5. Status of GPS Tracking System. The EDLC stated that staff has received approval to purchase the GPS from COR and that the GPS is being purchased. After staff receives approval from the Department head and COR to use the GPS, staff will move forward.

6. Eform Financial Disclosure Filing System. The ALC stated that staff has implemented a mandatory Financial Disclosure eform that all city employees must use. This will minimize the staff's workload of having to track and file several hundreds of paper forms. Commissioner Yuen asked why department heads can't be more responsible for their employees turning in the form. The EDLC responded that when employees are delinquent in turning in their forms, staff sends a letter to the administrative and the legislative branches informing them which employees are delinquent and requesting that they instruct the employee to file the form.

7. Ethics Survey of City Employees. The ALC reported that the last time a survey was conducted was in 2008-2010. The paper survey results were tabulated by a former Po'okela intern. It is time to acquire new data in order to understand the employees feelings about the ethical culture of the city and the Ethics Commission's performance. The ALC made the Commission's existing paper survey in electronic form using "Surveygizmo," a web-based software program that automatically calculates data and provides reports. The ALC provided the Commissioners with a binder of the 2008-2010 survey results, a preliminary report of the current survey results, and a copy of the survey questions. Commissioners Lilly and Burroughs stated that they thought the ALC did a good job on the survey. Commissioner Burroughs asked if the Commission would be provided with the final report. The ALC responded that she planned to post the final report online, on the Commission's webpage, and will also provide the Commissioners with the final report at the next meeting.

8. Ethics Conference Attendance. The ALC reported that she had spoken to a colleague who attended the proposed Society of Compliance and Ethics conference and that the colleague stated that she believed it may be too basic for the ALC to attend. The ALC stated that she believed it would not be fiscally prudent at this time to attend the conference since it is even more expensive than the traditional COGEL conference that staff has attended in the past. The ALC stated that they will continue to look into other continuing ethics and compliance education options and conferences.

9. Public Responses to Advisory Opinion No. 2014-6 Regarding Romy Cachola. The EDLC reported that staff has received kudos from others in government. The Advisory Opinion helps people to generally trust that the city can look into solving its own problems. The EDLC stated that he received a lot of questions and the comments received were less radical than

usual. The EDLC stated that Richard Borreca, columnist for the Star Advertiser, informed him that he appreciated the depth of the Advisory Opinion as it gave him a greater understanding and context for the opinion. Mr. Borreca wrote a very good article on this issue. He was concerned that Mr. Cachola threw other councilmembers under the bus instead of apologizing to his family and constituents. The EDLC recalled that the CM Cachola case reminded him of former CM Rene Mansho's case in which despite overwhelming evidence, she would not admit doing anything wrong.

Commissioner Lilly stated that a lot of his friends and relatives commented positively in support of what the Commission did. He asked what was the Commission's next largest fine before this. The EDLC responded that it was the \$6,500 fine against former CM Nestor Garcia. The EDLC stated that the two cases were very different; as soon as CM Garcia received the Notice of Alleged Violation, he and his attorney came to see the EDLC and worked out a settlement. CM Garcia admitted his mistakes. The EDLC stated that the \$50,000 fine imposed on former CM Cachola is one of the highest fines nationwide of a politician. Although some fines are higher for campaign finance problems.

10. Communication with Administration Regarding Corporation Counsel's Budget Authority Over the Ethics Commission. The EDLC reported that Vice Chair Chen approved the response, but she was not sure if the response really addressed the Commission's concerns. Commissioner Lilly reviewed the approved response and confirmed that it was consistent with the Commission's discussion last month. The Commission unanimously agreed that the response was ready to be sent out.

- B. For Action: Request for a Motion to Adopt Staff's FY 2016 Budget Request.
- C. For Action: Request for a Motion to Adopt Staff Recommendations Regarding the FY 2015 Salaries for the EDLC and ALC.
- D. For Action: Request for a Motion to Justify the FY 2016 Base Salaries Budget for the EDLC and ALC.

The EDLC requested to discuss agenda items B, C, and D together.

The EDLC explained that in regard to item B, the attachments to his Open Session Memo, 1-4, were copies of what was sent to the Department of Budget and Fiscal Services ('BFS') as the Commission's budget request.

He stated that in regard to item C, there is a timing issue that Fiscal Services has explained to staff. Since the EDLC and ALC salaries are not tied to a bargaining unit increase, by the time the Commission approves a raise, there are no budgeted funds available because the budget is set two years prior. The salaries of the EDLC and ALC are therefore always a year behind because

the proper increase was not budgeted for the future years. The proper amounts need to be budgeted in advance so that the EDLC and ALC will have the required funding.

In regard to item D, the EDLC passed out several documents showing statistics. He stated that in the past, staff has investigated an average of 89 cases, but this year, the number of cases has increased to 107. The EDLC stated that in comparison, the Honolulu Police Department Professional Standards Office administrative detectives only investigate about 18 cases per year. Also, the Attorney General assigns only about 20-30 administrative cases per investigator. These comparisons indicate that the Commission needs another investigator.

The EDLC referred to attachment OPEN-1 of his Open Session memo. He stated that this list is in order of priorities of major issues that he is presenting to the administration. The asterisk indicates the FY16 salaries which are the most complex calculations. He explained that his FY14-16 chart helps explain two issues in regard to the ALC's salary (as an example): (1) Justification for the salary increase; and (2) salary increase history. He stated that on June 30, 2014, he completed his evaluation of the ALC; the ALC received high marks. He thought she would be eligible for a merit increase, so he authorized her raise. But there were no funds budgeted for a merit raise. Therefore, the Commission needs to use salary savings from not having a Legal Clerk I, and not having an Investigator IV for several months to pay for the ALC's allotted merit raise.

BFS Fiscal Division says they will determine if there are any other savings available to pay the ALC \$82,140. Regardless, the ALC's base salary for budget purposes for FY16 should be \$82,140. This does not mean that any additional FY 16 salary increase/adjustment will be paid, but the \$82,140 needs to be put down as a base salary in the budget, otherwise the ALC will continue to not have sufficient budgeted salary funds. It is his understanding that COR budgets a 4% merit increase for each deputy.

Commissioner Yuen asked if the staff has used FY 2014 salary savings to pay for the raise, and could the FY 2015 salary savings be used? He asked if there is a carry-over of savings to the next year. The EDLC responded, that the Commission needs to get past always using salary savings for merit increases, that is why the Commission needs to budget for appropriate merit increases.

The EDLC explained further handouts depicting charts. Commissioner Lilly asked if the recommendation in agenda item B is to move and adopt the FY 2016 budget request, as it seems like item B encompasses agenda item D which is also a restatement of agenda item C. The EDLC responded that he was using a "belt and suspenders" approach.

Commissioner Yuen stated that he always believes in equal pay for equal work, especially for employees working in the same department. Commissioner Yuen stated that he had no problems with approving the discussed agenda items.

Commissioner Burroughs moved to approve and adopt the recommendations for agenda item B. Commissioner Silva seconded the motion. The motion passed unanimously.

Commissioner Burroughs moved to approve and adopt agenda item C. Commissioner Yuen seconded the motion. The motion passed unanimously.

Commissioner Lilly asked if the EDLC needed item D approved. The EDLC stated that it would be helpful if approved. **Commissioner Burroughs moved to approve and adopt agenda item D. Commissioner Silva seconded the motion. The motion passed unanimously.**

Commissioner Lilly stated that from his standpoint, the EDLC and ALC are worth more than these pay levels. He wished he could pay them more. When comparing the work we do with the deputy attorney generals (as he was the Attorney General and with the department for many years), he believes that the EDLC does more than a division head. Commissioner Lilly stated that the EDLC is running a department; has a huge workload; and has an office that is understaffed and underpaid. This salary is the very minimum of what the EDLC should get paid. The EDLC stated that we are going to work with Cathy Maki, Administrative Services Officer, COR, earlier in the fiscal year so we won't have these timing issues in the future. He further stated that he appreciates the Commission's review and decision of the budget items, as the Budget Department needed any other changes submitted today.

V. EXECUTIVE SESSION SUMMARY

Commissioner Silva moved to enter into Executive Session. Commissioner Yuen seconded the motion. The motion was unanimously approved. The Commission entered into Executive Session to address the Executive Session Agenda Items.

- A. For Action: Request for a Motion to Approve and Adopt the Minutes of the Executive Session of the September 17, 2014 Meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

Commissioner Burroughs moved to approve the minutes. Commissioner Silva seconded the motion. The motion couldn't be passed because there was no quorum as Commissioner Yuen was recused from the prior meeting. The motion was tabled until the next meeting.

- B. For Discussion: Request for Advice – Does a City Officer have a Conflict of Interest such that he/she Must Recuse himself/herself from Evaluating a Subordinate Employee? (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

After discussion, **Commissioner Yuen moved to approve staff to draft a formal advisory opinion consistent with the EC's discussion for their review at the next meeting. Commissioner Silva seconded the motion. The motion passed unanimously.**

- C. For Discussion: Work Performance Evaluation for the EDLC. (HRS Secs. 92-5(a)(2) and (a)(8))

The EDLC thanked the Commissioners for their feedback and addressed an issue that was raised.

D. For Action: Request for a Motion to Increase the FY 2015 Salary for the EDLC with Conditions. (HRS Secs. 92-5(a)(2) and (a)(8))

Commissioner Lilly asked for a motion for a formal recommendation on a salary increase. **Commissioner Burroughs moved to approve the recommendation on a salary increase for the EDLC. Commissioner Silva seconded the motion. The motion passed unanimously.**

VI. ADJOURNMENT

Commissioner Burroughs moved to exit Executive Session and adjourn the meeting. Commissioner Silva seconded the motion. The motion passed unanimously.

The meeting adjourned at approximately 1:30 p.m.